

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PETER JOHN VIAMONTE,

Plaintiff,

v.

Case No. 1:15-cv-02669-AJN

CHASE BANK USA, N.A., et al.,

Defendant.

**DEFENDANT EQUIFAX INFORMATION SERVICES LLC'S
ANSWER AND DEFENSES TO PLAINTIFF'S COMPLAINT**

Defendant, Equifax Information Services LLC ("Equifax"), by Counsel, files its Answer and Defenses to Plaintiff's Complaint ("Complaint") as follows:

PRELIMINARY STATEMENT

In answering the Complaint, Equifax states that it is responding to allegations on behalf of itself only, even where the allegations pertain to alleged conduct by all Defendants. Equifax denies any and all allegations in the headings and/or unnumbered paragraphs in the Complaint.

ANSWER

In response to the specific allegations in the enumerated paragraphs in the Complaint, Equifax responds as follows:

1. Equifax admits that this action purports to be brought pursuant to the FCRA, NYFCRA, and FDCPA. Equifax denies that it is liable to Plaintiff for violation of the FCRA, NYFCRA, or FDCPA, denies that Plaintiff was damaged by any action or inaction of Equifax, and denies that Plaintiff is entitled to any of the relief requested.

2. Equifax denies the allegations in Paragraph 2 as they relate to it. Equifax is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 2 and, therefore, denies those allegations.

3. To the extent that Plaintiff can maintain this action, which Equifax denies, it admits the allegations in Paragraph 3 and that jurisdiction and venue are proper in this Court.

4. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4 and, therefore, denies those allegations.

5. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5 and, therefore, denies those allegations.

6. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 6 and, therefore, denies those allegations.

7. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 7 and, therefore, denies those allegations.

8. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 8 and, therefore, denies those allegations.

9. Equifax admits that it is a consumer reporting agency within the meaning of the FCRA and NYFCRA and that it is authorized and qualified to do business in New York. Equifax denies the remaining allegations in Paragraph 9.

10. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 10 and, therefore, denies those allegations.

11. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 11 and, therefore, denies those allegations.

12. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12 and, therefore, denies those allegations.

13. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 13 and, therefore, denies those allegations.

14. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 14 and, therefore, denies those allegations.

15. Equifax denies the allegations in Paragraph 15 as they relate to Equifax. Equifax is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 15 and, therefore, denies those allegations.

16. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16 and, therefore, denies those allegations.

17. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 17 and, therefore, denies those allegations.

18. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 18 and, therefore, denies those allegations.

19. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 19 and, therefore, denies those allegations.

20. Equifax admits that it received a dispute letter from Plaintiff, post marked September 26, 2015, regarding a Chase account. Equifax denies the remaining allegations in Paragraph 20.

21. Equifax admits that Chase verified the account information as accurate and that Equifax sent Plaintiff the results of the reinvestigation on October 1, 2014. Equifax denies the remaining allegations in Paragraph 21.

22. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 22 and, therefore, denies those allegations.

23. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 23 and, therefore, denies those allegations.

24. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 24 and, therefore, denies those allegations.

25. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 25 and, therefore, denies those allegations.

26. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 26 and, therefore, denies those allegations.

27. Equifax denies the allegations in Paragraph 27 as they relate to Equifax. Equifax is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 27 and, therefore, denies those allegations.

28. Equifax denies the allegations in Paragraph 28 as they relate to Equifax. Equifax is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 28 and, therefore, denies those allegations.

29. Equifax restates and incorporates its responses to paragraphs 1-28 as though fully set forth herein.

30. Equifax denies the allegations in Paragraph 30 as they relate to Equifax. Equifax is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 30 and, therefore, denies those allegations.

31. Equifax denies the allegations in Paragraph 31 as they relate to Equifax. Equifax is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 31 and, therefore, denies those allegations.

32. Equifax denies the allegations in Paragraph 32 as they relate to Equifax. Equifax is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 32 and, therefore, denies those allegations.

33. Equifax denies the allegations in Paragraph 33 as they relate to Equifax. Equifax is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 33 and, therefore, denies those allegations.

34. Equifax denies the allegations in Paragraph 34 as they relate to Equifax. Equifax is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 34 and, therefore, denies those allegations.

35. Equifax denies the allegations in Paragraph 35 as they relate to Equifax. Equifax is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 35 and, therefore, denies those allegations.

36. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 36 and, therefore, denies those allegations.

37. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 37 and, therefore, denies those allegations.

38. Equifax denies the allegations in Paragraph 38 as they relate to Equifax. Equifax is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 38 and, therefore, denies those allegations.

39. Equifax denies the allegations in Paragraph 39 as they relate to Equifax. Equifax is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 39 and, therefore, denies those allegations.

40. Equifax denies the allegations in Paragraph 40 as they relate to Equifax. Equifax is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 40 and, therefore, denies those allegations.

41. Equifax denies the allegations in Paragraph 41 as they relate to Equifax. Equifax is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 41 and, therefore, denies those allegations.

42. Equifax denies the allegations in Paragraph 42 as they relate to Equifax. Equifax is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 42 and, therefore, denies those allegations.

43. Equifax denies the allegations in Paragraph 43 as they relate to Equifax. Equifax is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 43 and, therefore, denies those allegations.

44. Equifax denies the allegations in Paragraph 44 as they relate to Equifax. Equifax is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 44 and, therefore, denies those allegations.

45. Equifax denies the allegations in Paragraph 45 as they relate to Equifax. Equifax is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 45 and, therefore, denies those allegations.

46. Equifax restates and incorporates its responses to paragraphs 1-45 as though fully set forth herein.

47. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 47 and, therefore, denies those allegations.

48. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 48 and, therefore, denies those allegations.

49. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 49 and, therefore, denies those allegations.

50. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 50 and, therefore, denies those allegations.

51. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 51 and, therefore, denies those allegations.

52. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 52 and, therefore, denies those allegations.

53. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 53 and, therefore, denies those allegations.

54. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 54 and, therefore, denies those allegations.

55. Equifax is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 55 and, therefore, denies those allegations.

56. Equifax admits Plaintiff has demanded a trial by jury and likewise demands a jury trial in this case.

57. Equifax denies that the Plaintiff is entitled to any relief claimed in her Complaint.

58. Any allegation in Plaintiff's Complaint not heretofore specifically responded to by Equifax is hereby denied.

DEFENSES

Without assuming the burden of proof where it otherwise rests with Plaintiff, Equifax pleads the following defenses to the Complaint:

First Defense

Plaintiff's Complaint fails to state a claim against Equifax upon which relief can be granted.

Second Defense

At all pertinent times, Equifax maintained reasonable procedures to assure maximum possible accuracy in its credit reports.

Third Defense

Plaintiff's damages, if any, were not caused by Equifax, but by another person or entity for whom or for which Equifax is not responsible.

Fourth Defense

Equifax complied with the FCRA and NYFCRA in its handling of Plaintiff's credit file and is entitled to each and every defense stated in the Acts and any and all limitations of liability.

Fifth Defense

At all relevant times herein, the Plaintiff's alleged damages, which Equifax denies exist, were aggravated by the failure of the Plaintiff to use reasonable diligence to mitigate the same. Therefore, Plaintiff's recovery, if any, should be barred or decreased by reason of his failure to mitigate alleged losses.

Sixth Defense

Plaintiff cannot meet the requirements of the FCRA or NYFCRA in order to recover punitive or statutory damages.

Seventh Defense

Equifax adopts by reference the defenses, criteria, limitations, standards and constitutional protections mandated or provided by the United States Supreme Court in the following cases: *BMW v. Gore*, 517 U.S. 559 (1996); *Cooper Indus., Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 923 (2001); *State Farm v. Campbell*, 538 U.S. 408 (2003) and *Safeco Insurance Co. of America v. Burr*, 127 S. Ct. 2201 (2007).

Eighth Defense

Plaintiff's claims may be barred by the applicable statute of limitations.

Equifax reserves the right to have additional defenses that it learns through the course of discovery.

WHEREFORE, having fully answered or otherwise responded to the allegations contained in Plaintiff's Complaint, Equifax prays that:

- (1) Plaintiff's Complaint be dismissed in its entirety and with prejudice, with all costs taxed against Plaintiff;
- (2) That it have a jury trial on all issues so triable;
- (3) That Equifax be dismissed as a party to this action;
- (4) That Equifax recover from Plaintiff its expenses of litigation, including but not limited to attorneys' fees; and
- (5) That it recovers such other and additional relief, as the Court deems just and appropriate.

Dated: April 28, 2015.

KING & SPALDING LLP

By: /s/Gregory Schneider
Gregory Schneider
KING & SPALDING, LLP
1185 Avenue of the Americas
New York, NY 10036-4003
(212) 556-2168
gschneider@kslaw.com

*Counsel for Defendant Equifax Information
Services LLC*